IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 815 OF 2005

Smt.Sarubai Narayan Mulik ..Appellant
Vs.
Murlidhar Nivrutti Devkar
and Anr. ..Respondents

....
Mr.Rajendra Sorankar for Appellant
Mr.Manoj Mohite for Respondent no.1
Mr.D.P.Adsule, A.P.P. for the State
....

CORAM: SMT. V.K. TAHILRAMANI, J.
DATE OF RESERVING THE ORDER : 26.08.2005
DATE OF PRONOUNCING THE ORDER : 30.08.2005

P.C.

1. Heard the learned advocate for the appellant i.e. original complainant and learned advocate for the Respondent no.1 i.e. original accused and learned A.P.P. for the State.

2. The complainant had filed a complaint against the respondent no.1 under Sections 420, 403 and 424 of IPC. The said complaint was filed before the learned J.M.F.C. Court No.5, Pune. In the said complaint, the learned Magistrate by judgment and

order dated 4.3.2002 convicted the respondent no.1 under Section 403 of IPC. Being aggrieved by the judgment and order dated 4.3.2002, Criminal Appeal NO.74 of 2002 was preferred by the respondent no.1 before the Sessions Court at Pune. The learned Sessions Judge by judgment and order dated 18.12.2003 set aside the conviction and sentence passed on the respondent no.1 under Section 403 of IPC. Being aggrieved by the said order of acquittal, this appeal against the acquittal, has been preferred by the original complainant.

3. Briefly stated, it is the case of the complainant that respondent no.1 is the son of her sister i.e. her nephew. The respondent no.1 used to help her in various proceedings and transactions from time to time. The complainant had piece of land at Wadgaon, Pune. On account of transaction relating to the said piece of land, Rs.18,50,000/- came to be deposited in the joint account of the complainant and respondent no.1. It is the specific case of the complainant that respondent no.1 transferred the amount of Rs.18,50,000/- to his own personal account. This was done by

respondent no.1 without informing the complainant. Thus, it is her case that the amount of Rs.18.5 lakhs was withdrawn from the joint account and was transferred to the individual account of the accused and the thumb impression on the documents pertaining to the transfer of the amount of Rs.18.5 lakhs were obtained by fraud. Thus, it is the case of the complainant that respondent no.1 dishonestly misappropriated the amount of Rs.18.5 lakhs which was originally in the joint account of the complainant and the respondent.

4. It is an admitted fact that the joint account in the name of the complainant and respondent was opened in the year 1989 and transaction in relation to the piece of land took place in the year 1995. In view of the case of the complainant, it would be necessary to see whether infact, the complainant had no knowledge that the accused had obtained signatures on Exhibits 113 and 114 fraudulently as contended by her. The complainant has admitted in her cross-examination that her thumb impression was attested by the Bank Manager at the time of withdrawing the amount i.e. 18.5 lakhs from her

joint account. She has also stated that she had gone to the Bank on many occasions.

5. It would also be pertinent to note the evidence of P.W.2 Rajkumar Nahar who was serving as Bank Manager in the said Bank at the relevant time. He is a witness for the complainant. His evidence is totally contradictory to the case of the complainant. In the present case, amount of Rs.18.5 lakhs has been transferred from the joint account of the complainant and the accused to the individual account of the accused. The said amount was transferred on the basis of two documents i.e. Exhibits-113 and 114. Vide Exh.113 an amount of Rs.11 lakhs was transferred and vide Exh.114 an amount of Rs.7.5 lakhs was transferred. The said documents bear the thumb impression of the complainant. P.W.2 Mr. Nahar, the Bank Manager has deposed about the withdrawal and the transfer of the amount of 18.5 lakhs on the basis of slips Exhibits-113 and 114. In his cross examination, he in clear terms admitted that the thumb impression of the complainant on Exhs.113 and 114 are certified by him. He has further stated that while

transferring the amount from one account to the other as per Exhs.113 and 114, the information in that regard was explained to the account holder. This witness has further stated that after reading the contents of Exhs.113 and 114, the complainant put her thumb impression. This witness has also admitted that at that time the complainant was accompanied by family members. It is pertinent to note that this witness who is a witness for the complainant, has stated that the complainant had gone through the papers and after reading the contents of Exhs.113 and 114, she put her thumb impression thereon. This witness has categorically stated that account holder from whose account, the amount is withdrawn, and the account holder in whose account the amount is deposited, are called at the time of such transaction. It is pertinent to note that this witness has not been declared hostile by the complainant, nor this witness has been cross-examined. There was no reason brought on record for this witness who is a Bank Official, to make a false statement against the complainant. It is seen that evidence of this witness in the cross-examination has gone unchallenged. From the

evidence of this witness who is a witness for the complainant, it is clear that the complainant had put her thumb impression on Exhs.113 and 114 after knowing the contents of these two documents.

6. I have also perused Exhs.113 and 114 which pertain to transfer of Rs.11 lakhs and Rs.7.5 lakhs respectively from the joint account of the complainant and the accused to the individual account of the accused. The said documents bear the thumb impression of the complainant. It is stated in both the documents that the said amounts to be debited from the account No.954 (i.e. the joint account) to Savings Account No.183 which is the account of Murlidhar Nivrutti Devkar (i.e. the individual account of the respondent no.1). In both these documents the complainant has stated that she has no objection to the said amount being transferred. It is further stated that she has been explained the contents of the documents and she has admitted the same and she has given her consent for the same.

7. Thus, it is seen that the evidence of the

witness examined by the complainant i.e. the Bank Manager P.W.2 Mr.Nahar , does not support her own case and his case is entirely contradictory to the case put forward by the complainant. Moreover, the documents i.e. Exhibits 113 and 114 also belie the claim of the petitioner. The learned Sessions Judge, has considered all these aspects and has thereafter, acquitted the respondent.

8. In the light of the evidence on record, I find that the view taken by the learned Sessions Judge is a reasonable and possible view. It is well settled that if the view of acquittal could have been reasonably arrived at, then the circumstance that the appellate Court could have taken a different view, would be no ground to interfere. In this connection, there are no dearth of authorities, however, to eschew prolixity, I am referring to only a few of them i.e. **A.I.R. 1971 S.C. 66 Khedu Mohton and others Vs. State of Bihar, A.I.R. 1987 S.C.1083 Totasingh Vs. State of Punjab and 1997 (1) Mh.L.J. 770 State of Maharashtra Vs. Balram @ Nam Amarsingh Talwar.** It has been observed in para 12 of the decision in

1997 (1) Mh.L.J. 770 that:-

. 12. At the very outset, we would like to point out that we are seized of the matter in an appeal against acquittal. It is well settled that unless appreciation of evidence is clearly unreasonable or the impugned order of acquittal is vitiated by some illegality, this Court does not interfere in an appeal against acquittal. It is equally well settled that if the view of acquittal is a possible view then this Court does not interfere in spite of the fact that it may feel that had it been the trial Court, it may have taken a different view. We are fortified in our view by the decisions of the Apex Court reported in **AIR 1971 SC 66 Khedu Mohton and Ors. Vs. State of Bihar and AIR 1987 SC 1083 Tota Singh Vs.State of Punjab.** We also feel that in this connection, it would be pertinent to refer to the decision of the Apex Court reported in **1995(2) SCC 486, State of Punjab Vs. Ajaib Singh,** where in para 7, Their Lorships of the Apex Court observed thus:-

. " We agree that this Court is not precluded or the Court hearing the appeal against acquittal is not prevented from examining and reappreciating the evidence on record. But the duty of a Court hearing the appeal against acquittal in the first instance is to satisfy itself if the view taken by acquitting court exercising appellate jurisdiction was possible view or not. And if the Court comes to conclusion that it was not, it can on reappreciation of evidence reverse the order".

9. In my view, the view of acquittal was a reasonable and possible view. In the circumstances, the appeal is dismissed.

[V.K.TAHILRAMANI,J.]